STATE OF MICHIGAN

COURT OF APPEALS

JAVIER RINCONES,

Plaintiff-Appellant,

v

KEITH KRAMER,

Defendant-Appellee,

and

BILL POMA,

Defendant.

UNPUBLISHED
February 23, 2006

No. 256706
Wayne Circuit Court
LC No. 03-324518-CZ

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Kramer's motion for summary disposition. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff, defendant's tenant, slipped and fell on an icy porch of the home he was renting. Plaintiff alleged that defendant, the owner of the house, negligently failed to maintain the premises in a safe condition as required under the common law and by statute, specifically MCL 125.471; MCL 125.536; and MCL 554.139. It was his theory that the ice formed from water dripping from a leaky roof. Defendant denied liability on the ground that the ice was an open and obvious danger. The trial court granted defendant's motion for summary disposition, noting that plaintiff did not have the right to intentionally run the risk of walking on the icy porch and put on the landlord the risk that plaintiff may fall and hurt himself.

II. STANDARD OF REVIEW

We review the trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

III. ANALYSIS

A tenant is a landlord's invitee. *Stanley v Town Square Coop*, 203 Mich App 143, 149; 512 NW2d 51 (1993). To the extent plaintiff claimed that defendant was liable for breaching his common law duty owed to a tenant/invitee, the open and obvious danger doctrine eliminates the duty owed to an invitee absent special aspects. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 519; 629 NW2d 384 (2001); *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). However, the open and obvious danger doctrine is not available to deny liability where the defendant has a statutory duty to maintain the premises in reasonable repair. *O'Donnell v Garasic*, 259 Mich App 569, 581; 676 NW2d 213 (2003). Plaintiff sought to hold defendant liable for breach of a statutory duty to repair. Therefore, the open and obvious doctrine does not shield defendant from liability.

We note that under MCL 554.139(1)(b), defendant's duty to repair is limited to the residential premises, i.e., the place where the lessee lives. Plaintiff claims that the accumulation of ice developed because of a leaky porch roof, improperly maintained gutters, and other disrepair that caused rain and melting snow to drip from the porch roof to the porch steps where it could freeze and accumulate. Plaintiff further claims that defendant failed to keep the premises and all common areas fit for the use intended by the parties. If the porch and roof were common areas, defendant's duty is limited to insuring that they were fit for their intended use. MCL 554.139(1)(a). We express no opinion whether the porch and roof were common areas, nor do we express an opinion whether the conditions at issue here rendered the property unfit for its intended use. We likewise express no opinion whether defendant can be held liable under the housing law, MCL 125.401 *et seq*.

We reverse on the ground that the open and obvious doctrine does not shield defendant from liability under MCL 554.139; MCL 125.536; and MCL 125.471. We remand to the trial court and the parties involved to determine whether the evidence in this case have statutory violations pursuant to MCL 554.139, MCL 125.536, and MCL 125.471.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette